



## **DEPARTMENT OF AGRICULTURE**

### **Rural Utilities Service**

**7 CFR Parts 1710, 1779, 1780 and 1783**

### **Rural Housing Service**

### **Rural Business-Cooperative Service,**

### **Rural Utilities Service**

### **Farm Service Agency**

**7 CFR Parts 1942 and 1980**

### **Rural Housing Service**

**7 CFR Part 3570**

### **Rural Business-Cooperative Service**

### **Rural Utilities Service**

**7 CFR Parts 4274, 4279, and 4280**

**[Docket No. RUS-20-TELECOM-0022]**

**RIN 0572-AC50**

## **Special Authority to Enable Funding of Broadband and Smart Utility Facilities Across Select Rural Development Programs**

**AGENCY:** Rural Utilities Service, Rural Housing Service, Rural Business-Cooperative Service, USDA.

**ACTION:** Final rule, confirmation and response to comments.

**SUMMARY:** The Rural Utilities Service, Rural Business-Cooperative Service, and Rural Housing Service, agencies that comprise the Rural Development (RD) Mission Area within the United States Department of Agriculture, published a final rule with comment in the **Federal Register** on September 15, 2020, to establish the special authority authorized by Section 6210 of the Agriculture Improvement Act of 2018, which will assist rural families

and small businesses in gaining access to broadband service by permitting recipients of loans, grants, and loan guarantees from RD to use up to 10 percent of the amount provided to construct broadband infrastructure in areas not served by the minimum acceptable level of broadband service. The final rule described the procedures by which these agencies will consider projects eligible for special broadband authority. Through this action, the agencies are confirming the final rule as it was published and providing responses to the public comments that were received.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the effective date of the final rule published September 15, 2020, at 85 FR 57077 is confirmed.

**FOR FURTHER INFORMATION CONTACT:** Michele Brooks, Director, Regulations Management Division, Innovation Center, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250; telephone 202–690–1078, email *Michele.Brooks@usda.gov*.

**SUPPLEMENTARY INFORMATION:**

Rural Development (RD) is a mission area within the United States Department of Agriculture (USDA) comprised of the Rural Utilities Service (RUS), Rural Housing Service (RHS) and Rural Business-Cooperative Service (RBCS). RD’s mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants, and technical assistance through more than 40 programs aimed at creating and improving housing, businesses, and infrastructure throughout rural America. Part of rebuilding America’s infrastructure is investing in rural broadband.

On December 20, 2018, Congress passed The Agricultural Improvement Act of 2018 (2018 Farm Bill) (Pub. L. 115-334). In addition to sweeping changes in broadband program authorities, Congress provided for special use of funding from other RD programs for

broadband deployment in Section 6210, “Smart Utility Authority for Broadband.” The provision granted the Secretary of Agriculture the discretion to allow recipients of grants, loans, or loan guarantees under RD programs to use not more than 10 percent of such funding to finance broadband infrastructure in areas not served by the minimum acceptable level of broadband service and which will not result in competitive harm to a current RD loan, grant, or loan guarantee.

The final rule that published September 15, 2020 (85 FR 57077), included a 60-day comment period that ended on November 16, 2020. The agency received comments from eight respondents that included industry associations, individuals, and a non-profit organization. All eight respondents were supportive of the final rule.

*Respondent 1:* The respondent, an industry association, provided constructive feedback related to four specific issues and areas of concern.

(1) The evaluation of the 10 percent rule could complicate or delay overall approval of an application for a grant or loan product. Evaluation of the broadband portion of loans under the final rule should not result in a delay of loan approval or processing.

Agency response: The respondent’s concern for not delaying the processing or approval of grant or loan products is acknowledged. The Agencies will work within their available resources to timely review and process any and all requests.

(2) Based on prior experience with other RD programs, the respondent urged the agencies to provide the applicant with access to the response/challenge filed in reply to their application and be given a chance to respond within a reasonable period and to verify incumbent claims of adequate service throughout the contested area.

*Agency response:* Through the public notice response process currently in place, the Agency can conduct an on-site review of the proposed service area to determine if adequate broadband exists. If an area of the proposed funded service area is found to be ineligible, the Agency will work with applicants to modify the proposed service area accordingly.

(3) The Agencies should clarify that it is requesting incumbents to provide actual speeds and results of speed test to verify the consumer experience and to provide pricing data for locations in question and urged the Agencies to avoid use of unreliable Broadband Data sets for verification.

*Agency response:* The Agency acknowledges the respondents comment and will take this recommendation into consideration for future modifications to the public notice response process.

(4) The respondent also urged the RUS to regularly update the minimum acceptable level of broadband service.

*Agency response:* The minimum acceptable level of broadband service is designed to change with the ever-increasing bandwidth requirements that the public requires. The Agency has implemented procedures in 7 CFR 1738.2 that allow the definition of broadband service to be updated any time an application window is opened through a notice in the *Federal Register* or required by statute.

*Respondent 2:* The respondent, an industry association, provided three specific comments as part of their response.

(1) The respondent reminded the Agency it must comply with requirements applicable to all broadband funding to include notice and challenge, reporting and Agency coordination.

*Agency response:* The Agency acknowledges this comment and will continue to follow the regulations and processes it has in place for its existing broadband lending programs.

(2) The respondent requested that RUS clarify than an area is only eligible for funding if there is no broadband service available, whether fixed or mobile, that reaches the designated speeds.

*Agency response:* Section 1980.1207(b) states that if RUS determines that the minimum acceptable level of broadband service is available in the proposed retail service area after review of information submitted from service providers, if any, and all available data on broadband availability, the Awarding Agency shall not approve the use of funds for such purpose. The Agency feels this section addresses the respondents comment and no changes are needed.

(3) The respondent encouraged RUS to adopt new rules for all of its broadband funding programs through notice and comment rulemaking procedures.

*Agency response:* The Agency will continue to follow all rulemaking procedures as applicable.

*Respondent 3:* The respondent, an industry association, encouraged careful precision when multiplying the number of programs supporting broadband. The respondent encourages USDA and the FCC programs to work in concert stating that Section 6210 funds should be used in concert with USF to deploy the fastest, most reliable networks possible. The respondent noted "as more RD programs support broadband network deployment under Sec 6210, it will remain essential to use the additional funds to supplement the work of existing programs instead of supporting an additional ISP in a rural area that will not even support one provider on its own." The respondent suggests that the rule "include a provision indicating that, for an area where FCC data indicate that a provider is receiving High-Cost USF support and is subject to the corresponding obligation to deploy a network that will deliver 25/3 Mbps or greater service, no other provider will be eligible to obtain funds pursuant to Section 6210 in that specific area."

*Agency response:* The Agency is committed to continuing to work with the FCC and other federal partners to ensure that their programs and RUS' programs are complementary of each other, not duplicative.

*Respondent 4:* The respondent, an industry association, provided a resolution that outlines the challenges that rural organizations and businesses have in identifying and accessing federal broadband resources. The resolution also provided generalized recommendations to Congress and federal agencies concerning adopting higher broadband speeds as the standard, strengthening local partnerships and coordination, addressing application barriers for businesses, local governments, cooperatives and Tribes; allocating designated portions of available funding to support projects on tribal lands and to leverage community anchor institutions to spur connectivity.

*Agency response:* Respondent four comments were more general and not specifically related to suggested changes for this final rule. The Agency appreciates the respondent's commitment to Rural America and to maintaining positive local and federal relationships.

*Respondent 5,* a university student, suggested the Agency increase the funding amount from 10 percent to 15 percent.

*Agency Response:* Section 6210 of the 2018 Farm Bill specifically states 10 percent. An increase of this percentage would require a statutory change.

*Respondent 6,* an individual, petitioned USDA to consider three changes:

(1) To define the minimum acceptable level of broadband service from 25MB down and 3MB up to 50MB down and 10MP up speeds.

*Agency response:* As stated in an earlier response, the minimum acceptable level of broadband service is designed to change with the ever-increasing bandwidth requirements that the public requires and to comply with statutory requirements. The Agency has implemented procedures in 7 CFR 1738.2 that allow the definition of broadband speeds to be updated any time an application window is opened through a notice in the Federal Register.

(2) Consider a temporary interest rate reduction on loans for organizations that provide broadband services to families engaged in distance education at a reduced cost.

*Agency response:* Section 6210 of the 2018 Farm Bill does not include a provision for an interest rate reduction when implementing this special broadband authority.

(3) Increase the percentage organizations can spend on broadband and smart utility facilities from 10 percent to 15 percent.

*Agency response:* As stated in a previous response, Section 6210 of the 2018 Farm Bill specifically limits such assistance to 10 percent. An increase of this percentage would require a statutory change.

*Respondent 7*, an individual, offered his support of USDA establishing the authority authorized by section 6210 of the Agricultural Improvement Act of 2018.

*Agency response:* The Agency appreciates the respondent's comments and support of this final rule.

*Respondent 8*, a non-profit organization, did not offer comments specific to the rule. Instead, they outlined the importance of accurate broadband mapping data and their proposed solution to help with this undertaking.

*Agency response:* The Agency appreciates the respondent's efforts to improve broadband mapping data and their commitment to Rural America.

The Agency evaluated the responsive comments and based on analysis, confirms the final rule without change.

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**Farah Ahmad**  
Deputy Under Secretary for Rural Development